

DEPARTMENT OF ADMINISTRATIVE & FINANCIAL SERVICES
BUREAU OF HUMAN RESOURCES
June 12, 2006

HUMAN RESOURCES MEMORANDUM 4-06

TO: Agency/Department Heads and Human Resource Representatives

**SUBJECT: IMPLEMENTATION OF PL 2005, CHAPTER 523: AN ACT TO
ASSIST MILITARY FAMILIES**

Chapter 523 is incorporated into the general labor laws (Title 26, new § 814) and applies to all employers, including the State. Chapter 523 provides up to 15 days unpaid leave for an employee who is the spouse, domestic partner, or parent of a service member (who is a resident of Maine) who is *deployed* for military service for greater than 180 days. In other words, this benefit does *not* apply to the service member employed by the State; it applies to the service member's spouse, domestic partner, or parent who is employed by the State. This benefit is called "Family Military Leave."

This legislation uses the term "deployed" advisedly. In order to be eligible for Family Military Leave the service member must be "deployed" for greater than 180 days to a duty assignment that is in "a combat theater" or "an area where armed conflict is taking place."

There are a number of other conditions that must be met to be eligible for Family Military Leave:

- The employee requesting leave must have been employed by the same employer (the State, not an individual agency) for at least 12 months, and at least 1,250 hours, during the 12-month period *immediately preceding* the commencement of the Family Military Leave.
- Only one 15-day Family Military Leave may be taken *per deployment*.
- The 15 days unpaid Family Military Leave may only be taken during the 15 days *immediately preceding* the deployment, during the 15 days *immediately following* the deployment, or *some combination* of both (e.g. 8 days before, 7 days after deployment).¹
- The employee must give advance notice of the intended Family Military Leave:
 - At least 14 days advance notice if the Family Military Leave is 5 or more consecutive work days.
 - If the Family Military Leave will be for fewer than 5 consecutive work days, the employee must give as much advance notice as is practicable.

¹ The use of the words "or both" in the second sentence of § 814, sub-§ 2 means that the 15 days *per deployment* may be split, using part of the 15 days immediately before and the balance immediately after the deployment. It does *not* mean that the employee is entitled to 15 days immediately before and 15 days immediately after the deployment.

- The employee must consult with the employer in an attempt to schedule the Family Military Leave so as not to unduly disrupt the operations of the employer.
- The employer may require certification from the proper military authority to verify eligibility for Family Military Leave. (This will generally be in the form of, but is not limited to, military orders provided to the service member. In the absence of military orders, the agency may obtain other written certification of "deployment" within the specific meaning of this law.)

The law also provides several employee protections including:

- Restoration to the position held by the employee when the leave commenced.²
- Continuation of benefits (e.g. health insurance) *at the employee's expense*.
- The employer may not retaliate against an employee for exercising his/her rights under the law.

As a practical matter, Family Military Leave will be treated as an Unpaid Personal Leave under the Civil Service Rules or appropriate collective bargaining agreement, as applicable to the individual employee.³

It is important to emphasize that this legislation does not preclude an employee from using paid vacation before, during, or after the deployment of a spouse, domestic partner, or child. That notwithstanding, the right to use the unpaid Family Military Leave provided in this legislation is subject to the specific conditions contained in the law; most specifically that it can only be taken *immediately before and/or immediately after* the deployment.

This legislation has an emergency preamble and, hence, was effective when it was signed by the Governor on April 3, 2006.

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² The legislation provides equivalency language, but a State employee will be returned to his/her former position.

³ The legislation permits the negotiation of alternative arrangements to continue employee benefits during a Family Military Leave at the *employer's* expense (for example, the employer continuing to pay health insurance as in Family Medical Leave or Voluntary Cost Savings Leave), but such an alternative arrangement is not currently in place.